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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/074,191 | 02/12/2002 | John A. Szymbor | EH-10586 | 4463 |

30188 7590 01/27/2004

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EXAMINER

PEAVEY, ENOCH E

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3676

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/074,191

Applicant(s)

SZYMBOR ET AL.

Examiner

Enoch E Peavey

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 24-30 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. In light of applicant's argument the restriction has been removed, all claims 1-30 are examined on their merits.

Claim Rejections - 35 USC § 102

- II. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- 1) Claims 1-4 and 7-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Datta, US No. 6,536,773. Datta discloses a bristle arrangement consisting essentially of a plurality of bristles arranged in a length (FIG. 8). There is a joint (weld located at the outer diameter) securing the plurality of bristles (224) together. The joint extends along the length (FIG. 8). The joint is located at one of the opposed ends of the bristles. The bristles may be metallic (col. 4, lines 53-58). The bristle arrangement is subsequently combined with plates (226) to form a brush seal (FIG. 8). The lengths of the bristles define a circle (arc). The circle (arc) has an outer diameter and an inner diameter with a continuous joint located at the outer diameter (FIG.

8). The pluralities of bristles are grouped in tufts (Col. 6, lines 34-35) the joint secures the tufts together (FIG. 9). The brush seal may consist of multiple stages (FIG. 8).

2) Claims 1-10, 12-20 and 24-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Atkinson et al., US No. 5,106,104.

3) Atkinson discloses a bristle arrangement consisting essentially of a plurality of bristles arranged in a length (FIG. 8). There is a joint (weld located at the outer diameter) securing the plurality of bristles (66) together. The joint extends along the length (FIG. 3). The joint is located at one of the opposed ends of the bristles. The bristles may be metallic (Col. 5, lines 25-27). The bristle arrangement is subsequently combined with plates (64 and 62) to form a brush seal (FIG. 3). The lengths of the bristles define a circle (arc, see FIG. 4). The circle (arc) has an outer diameter and an inner diameter with a continuous joint located at the outer diameter (FIG. 3). The brush seal may consist of multiple stages (FIG. 3).

4) Atkinson discloses a method of making a brush seal having multiple stages comprising the steps of providing plates (62, 72, 82, 92) and bristle arrangements (66, 76, 86 and 96). Creating a stack of the plates and bristle arrangements to define the multiple stages and joining the stack to create a brush seal (FIG. 3). The bristle arrangement includes a plurality of bristles (66, 76, 86, 96) arranged along a length and a continuous joint extending along the length and securing the plurality of bristles together. The plurality of bristles is arranged in a circle (arc). The joining step comprises welding (located at the outer circumference of the bristles). The plates and the bristle arrangements are discrete before the stack-creating step. The brush seal comprises a windage cover (64).

Response to Arguments

III. Applicant's arguments filed 29 December 2003 have been fully considered but they are not persuasive. Applicant argues that the Datta reference does not disclose the joining steps involving essentially just the steps as set about above. Examiner disagrees. The language essentially just is not narrow enough to obviate the claims of the present invention from the Datta reference. The single rail of data is not enough to take the reference out of the range of essentially just because the presence of the rails do not materially affect the basic and novel characteristic(s) of the claimed invention.

1) The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. In re Herz, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976).

The fact that the arrangement may consist of fewer components is not sufficiently persuasive to take the applied reference out of the range of consisting essentially of.

If applicant wants to specifically claim only those components applicant is welcome to use the language "consisting of".

2) Applicant further argues that the Atkinson reference does not disclose the step of joining the stack of plates and bristle arrangements to form multiple stages. Examiner disagrees. Join means to *put or bring together so as to form a unit*. See Webster's Collegiate Dictionary 10th Edition. The seal of Atkinson is clearly brought together to form such a unit, see Fig. 3.

3) Applicant argues that Atkinson fails to disclose the bristle arrangement being "for subsequent use in a brush seal". Once again the argument is immaterial because applicant is arguing intended use. See applicant's claim construction of claim 12.

Allowable Subject Matter

Art Unit: 3676

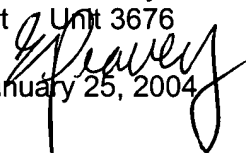
IV. Claims 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

V. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Enoch E Peavey whose telephone number is 305 1977. The examiner can normally be reached on Mon-Fri 8:00 am to 4:30 am.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on (703) 308- 3179. The fax phone numbers for the organization where this application or proceeding is assigned are 305 3597 for regular communications and 305 3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1113.

Enoch Peavey
Art Unit 3676


January 25, 2004